

**DOCKET NO. 580652**

TEXAS ALCOHOLIC BEVERAGE	§	BEFORE THE TEXAS
COMMISSION	§	
	§	
VS	§	
	§	
BARBOSA AND VILLARRUEL INC.	§	
D/B/A LA HERRADURA MEAT MARKET Y	§	ALCOHOLIC
TAQUERIA	§	
PERMIT/LICENSE NO(s). BQ575200	§	
	§	
HARRIS COUNTY, TEXAS	§	
(SOAH DOCKET NO. 458-09-2252)	§	BEVERAGE COMMISSION

**ORDER ADOPTING PROPOSAL FOR DECISION**

**CAME ON FOR CONSIDERATION** on this 29<sup>th</sup> day of May, 2009, the above-styled and numbered cause.

After proper notice was given, this case was heard by Administrative Law Judge Rex A. Shaver. The hearing convened on March 27, 2009 and adjourned on the same day. The Administrative Law Judge made and filed a Proposal for Decision containing Findings of Fact and Conclusions of Law on April 30, 2009. This Proposal for Decision was properly served on all parties who were given an opportunity to file Exceptions and Replies as part of the record herein. As of this date no exceptions have been filed.

The Administrator of the Texas Alcoholic Beverage Commission, after review and due consideration of the Proposal for Decision adopts the Findings of Fact and Conclusions of Law of the Administrative Law Judge, that are contained in the Proposal For Decision and incorporates those Findings of Fact and Conclusions of Law into this Order, as if such were fully set out and separately stated herein. All Proposed Findings of Fact and Conclusions of Law, submitted by any party, which are not specifically adopted herein are denied.

**IT IS THEREFORE ORDERED** by the Administrator of the Texas Alcoholic Beverage Commission, pursuant to Subchapter B of Chapter 5 of the Texas Alcoholic Beverage Code and 16 TAC §31.1 of the Commission Rules, that Respondent's permits are herein **SUSPENDED for three (3) days**.

**IT IS FURTHER ORDERED** that unless the Respondent pays a civil penalty in the amount of \$450.00 on or before the **23<sup>rd</sup> day of June 2009**, all rights and privileges under the above described permits will be **SUSPENDED for a period of three (3) days beginning at 12:01 A.M. on the 1<sup>st</sup> day of July 2009**.

This Order will become final and enforceable on June 22, 2009, unless a Motion for Rehearing is filed before that date.

By copy of this Order, service shall be made upon all parties by facsimile and by mail as indicated below.

**SIGNED** this the 29th day of May 2009, at  
Austin, Texas.



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Alan Steen, Administrator  
Texas Alcoholic Beverage Commission

State Office of Administrative Hearings  
**ADMINISTRATIVE LAW JUDGE**  
2020 North Loop West, Suite 111  
Houston, Texas 77018  
***VIA FACSIMILE (713) 812-1001***

Barbosa And Villarruel Inc.  
d/b/a La Herradura Meat Market Y Taqueria  
**RESPONDENT**  
2903 Mangum Rd 'B'  
Houston, Texas 77092  
**VIA REGULAR MAIL**

Sandra K. Patton  
**ATTORNEY FOR PETITIONER**  
TABC Legal Section

Licensing Division

Houston Compliance Office

SKP/aa

**DOCKET NUMBER: 580652**

**REGISTER NUMBER:**

**NAME: BARBOSA AND VILLARRUEL INC.**

**TRADE NAME: LA HERRADURA MEAT MARKET**

**ADDRESS: 2903 MAGNUM ROAD 'B', HOUSTON, TEXAS 77092**

**DUE DATE: JUNE 23, 2009**

**PERMITS OR LICENSES: Q575200**

**AMOUNT OF PENALTY: \$450.00**

Amount remitted \$ \_\_\_\_\_ Date remitted \_\_\_\_\_

*You may pay a civil penalty rather than have your permits and licenses suspended if an amount for civil penalty is included on the attached order.*

**YOU HAVE THE OPTION TO PAY THE CIVIL PENALTY ONLY IF YOU PAY THE ENTIRE AMOUNT ON OR BEFORE THE DUE DATE. AFTER THAT DATE YOUR LICENSE OR PERMIT WILL BE SUSPENDED FOR THE TIME PERIOD STATED ON THE ORDER.**

**Mail this form with your payment to:**

**TEXAS ALCOHOLIC BEVERAGE COMMISSION  
P.O. Box 13127  
Austin, Texas 78711  
Overnight Delivery Address: 5806 Mesa Dr., Austin, Texas 78731**

**You must pay by postal money order, certified check, or cashier's check. No personal or company check nor partial payment accepted. Your payment will be returned if anything is incorrect. You must pay the entire amount of the penalty assessed.**

**Attach this form and please make certain to include the Docket # on your payment.**

\_\_\_\_\_  
Signature of Responsible Party

\_\_\_\_\_  
Street Address P.O. Box No.

\_\_\_\_\_  
City State Zip Code

\_\_\_\_\_  
Area Code/Telephone No.

# State Office of Administrative Hearings



Cathleen Parsley  
Chief Administrative Law Judge

April 30, 2009

Alan Steen  
Administrator  
Texas Alcoholic Beverage Commission  
5806 Mesa Drive  
Austin, Texas 78731

**VIA REGULAR MAIL**


**RE: Docket No. 458-09-2252; Texas Alcoholic Beverage Commission vs. Barbosa and Villarruel Inc. d/b/a La Herradura Meat Market Y Taqueria**

Dear Mr. Steen

Please find enclosed a Proposal for Decision in this case. It contains my recommendation and underlying rationale.

Exceptions and replies may be filed by any party in accordance with 1 TEX. ADMIN CODE § 155.59(c), a SOAH rule which may be found at [www.soah.state.tx.us](http://www.soah.state.tx.us).

Sincerely,

  
Rex A. Shaver  
Administrative Law Judge

RAS/mr  
Enclosure

xc: Docket Clerk, State Office of Administrative Hearings- **VIA REGULAR MAIL**  
Sandra Patton, Staff Attorney, Texas Alcoholic Beverage Commission, 427 W 20<sup>th</sup> Street, Suite 600, Houston, TX 77008- **VIA REGULAR MAIL**  
Lou Bright, Director of Legal Services, Texas Alcoholic Beverage Commission, 5806 Mesa Drive, Austin, TX 78731- **VIA REGULAR MAIL**  
Barbosa and Villarruel Inc. d/b/a La Herradura Meat Market Y Taqueria, 2903 Mangum Road "B", Houston, Texas 77092 -**VIA REGULAR MAIL**

**SOAH DOCKET NO. 458-09-2252**

**TEXAS ALCOHOLIC BEVERAGE  
COMMISSION,  
Petitioner**

**VS.**

**BARBOSA AND VILLARRUEL INC.  
D/B/A LA HERRADURA MEAT  
MARKET Y TAQUERIA  
PERMIT/LICENSE NO.  
BQ575200  
Respondent  
HARRIS COUNTY, TEXAS  
(TABC CASE NO. 580652)**

§ 102-21-102. (a) The following shall constitute the official seal of the State of Connecticut:

**BEFORE THE STATE OFFICE**

OF

## ADMINISTRATIVE HEARINGS

## **PROPOSAL FOR DECISION**

## NUNC PRO TUNC

The staff of the Texas Alcoholic Beverage Commission (TABC or Commission) brought this enforcement action against B & P Group LLC d/b/a Citizen (Respondent) for an offense committed in violation of TEX. ALCO. BEV. CODE ANN. (Code) §§ 61.71 (a) ( ), 61.73 and 102.31. The alleged violation occurred on or about May 26 and May 27, 2008, when Respondent, its agent, servant, or employee gave a check or draft for the purchase of beer that was dishonored when presented for payment, in violation of Code §§ 61.71 (a) ( ), 61.73 and 102.31

This Proposal for Decision finds the allegations by 'ABC to be proven and adopts the recommendation of the staff that the license be suspended for a period of 3 days or that Respondent be allowed to pay a civil penalty of \$450 in lieu of suspension.

## I. PROCEDURAL HISTORY, NOTICE, AND JURISDICTION

The hearing in this matter convened on March 27, 2009, at the offices of the State Office of Administrative Hearings (SOAH) in Houston, Harris County, Texas. The staff of the Commission

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at 9:00 a.m. at the offices of the State Office of Administrative Hearings (SOAH) in Houston, Harris County Texas.

### III. DISCUSSION

In light of the failure of Respondent to appear at the hearing, Petitioner requested that the default provisions of 1 TAC § 155.501 be invoked. The ALJ finds that Petitioner issued notice in compliance with 1 TAC §§ 155.501 and TEX. ALCO. BEV. CODE ANN. § 11.63. Pursuant to 1 TAC § 155.501, the allegations presented in the Notice of Hearing are deemed admitted as true. Accordingly, the ALJ has incorporated these allegations into the Proposed Findings of Fact below. As admitted, the allegations support the conclusion that Respondent violated the TEX. ALCO. BEV CODE as mentioned in the notice and that the penalty is appropriate.

### IV. FINDINGS OF FACT

Respondent holds a Wine and Beer Retailer's Off Premise Permit, BQ-575200 issued by the Texas Alcoholic Beverage Commission (Petitioner).

2. On May 26, 2008, Respondent or Respondent's agent, servant, or employee, gave a check or draft for the purchase of beer that was dishonored when presented for payment.
3. On May 27, 2008, Respondent or Respondent's agent, servant, or employee, gave a check or draft for the purchase of beer that was dishonored when presented for payment.
4. On January 30, 2009, Petitioner sent a Notice of Hearing to Respondent by certified mail, article number 7006 0810 000 2143 0420 to the last known address, alleging that because of the violations referenced in Finding of Fact No. 2 and 3, Respondents permits or licenses could be denied, refused, cancelled, or suspended.

The United States Postal Service Return Receipt number 7006 0810 000 2143 0420 was returned to Petitioner showing delivery of the article.

6. The Notice of Hearing notified Respondent of the date, time, and place of the hearing; of the statutes and rules involved; the legal authorities under which the hearing is to be held, and of the matters asserted.

On March 27, 2009, a hearing convened before ALJ Rex A. Shaver at 2020 North Loop West, Suite 111, Houston, Texas 77018.

- 8 The Notice of Hearing contained language in 12-point type informing Respondent that if it failed to appear at the hearing, the factual allegations against it would be deemed admitted as true, and the relief sought in the notice of hearing might be granted by default.
- 9 Petitioner appeared and was represented by Sandra Patton, Staff Attorney. Respondent did not appear.

### V. CONCLUSIONS OF LAW

The Texas Alcoholic Beverage Commission (Petitioner) has jurisdiction over this matter pursuant to Subchapter B of Chapter 5 and § 61.71 of the TEX. ALCO. BEV. CODE (the Code).

- 2 SOAH has jurisdiction over matters related to the hearing in this proceeding, including the authority to issue a proposal for decision with proposed findings of fact and conclusions of law, pursuant to TEX. GOV'T CODE ANN. ch. 2003.

Service of proper and timely notice of the hearing was effected upon Respondent pursuant to the Code § 11.63; TEX. GOV'T CODE ANN. §§ 2001.051, 2001.052 and 2001.054(c); and 1 TAC § 155.501.

4. Based on Findings of Fact Nos. 1 through 9, and Conclusion of Law Nos. 1 through 3, Staff is entitled to a default judgment against Respondent pursuant to 1 TAC § 155.501.

The license should be suspended for a period of 3 days and Respondent be allowed to pay a civil penalty of \$450 in lieu of suspension.

**NUNC PRO TUNC Signed on April 30, 2009.**



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**REX A. SHAVER**  
**ADMINISTRATIVE LAW JUDGE**  
**STATE OFFICE OF ADMINISTRATIVE HEARINGS**